

Appl. No. 09/832,631
Amdt. dated July 18, 2005
Reply to Final Office Action of January 18, 2005

REMARKS

Applicants have received and carefully reviewed the Final Office Action mailed January 18, 2005, and the Advisory Action mailed June 29, 2005. Claims 1-62 are pending, with claims 8, 10, 12, 17, 20-28, 36, 41, 44-52 and 54-62 withdrawn from consideration due to restriction. Reconsideration and reexamination are respectfully requested.

As a preliminary matter, claims 2 and 30 have been amended to recite:

2. A spectrometer system as in claim 1, wherein the optical filter substantially reflects light when the incident light is of a wavelength outside the plurality of bandpass regions.

30. A spectrometer as in claim 29, wherein the optical filter substantially reflects light when the incident light is of a wavelength outside the plurality of bandpass regions.

Prior to amendment, these dependent claims called for an optical filter in addition to that already recited in respective base claims 1 and 29. After amendment, these dependent claims now correctly recite further limitations of the optical filters of claims 1 and 29, rather than separate optical filters. No new matter is added.

In reviewing the Final Office Action, Applicants note that section 9 of the PTO-326 Form was checked. Applicants believe this to be a misprint or typographical error, as no explanation of any objection to the specification was stated in the Final Office Action. It is believed that the specification is in condition for allowance.

In part 1 of the Final Office Action, claims 1-7, 9, 11, 13-16, 18, 19, 29-35, 37-40, 42, 43 and 53 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,950,101 to Dewey, Jr., in view of U.S. Patent No. 5,504,575 to Stafford, Published U.S. Pub. No. 2003/0034281A1 to Kumar, and U.S. Patent No. 5,835,645 to Jorgenson et al. The rejection relies generally on Dewey, Jr., and uses Stafford to provide an optical encoding unit, Kumar to suggest an integrating sphere, and Jorgenson et al. to suggest certain recited filters.

Applicants appreciate the discussion and explanation provided in the Advisory Action. Applicants have previously argued that it would not be obvious to add an encoder to the system of Dewey, Jr. The Examiner pointed out that certain features of the recited optical encoder were not recited within the claims, and therefore certain arguments presented by Applicants were

Appl. No. 09/832,631
Amdt. dated July 18, 2005
Reply to Final Office Action of January 18, 2005

considered non-persuasive. In light of the Advisory Action, Applicants have amended claim 1 to recite the following:

1. A spectrometer system for performing spectroscopic determination on biological media, the spectrometer system comprising:
 - a light source for generating light;
 - an optical filter positioned to receive light from the light source, the filter having a plurality of bandpass regions, wherein light within a bandpass region is transmitted through the filter such that for each bandpass region there is a corresponding passband of light, the optical filter further disposed such that a plurality of passbands of light pass through the optical filter from the light source simultaneously;
 - an optical encoding unit positioned for encoding ~~selected frequencies of light passing through passbands of light corresponding to bandpass regions of the optical filter,~~ the optical encoding unit configured for selecting subsets of the passbands of light;
 - a sampler for transmitting the light into the sample and for receiving the non-absorbed light from the sample; and
 - a detector for receiving the non-absorbed light and for generating an electric signal indicative of the non-absorbed light.

In claim 1, as now amended, both an optical filter having a plurality of bandpass regions having corresponding passbands of light and an optical encoder configured for selecting subsets of the passbands of light from the optical filter are recited. The encoder allows selection of desired combinations of wavelength bands to pass through to the sample. As pointed out previously, the suggested combination of an encoder in conjunction with the filter of Dewey, Jr., would have no motivation. Specifically, the filter element suggested in Dewey, Jr., is disposed with respect to the light source such that only one frequency band passes at a time. An encoder configured to select subsets from a plurality of passbands, as recited, would have no function, or would be rendered unusable, in the system of Dewey, Jr. This renders the basic combination of Dewey, Jr., with Stafford, nonobvious, as it lacks motivation. Simply put, because Dewey, Jr., passes a single frequency band at a time, the recited encoder would be superfluous in such a system.

Furthermore, the optical filter, as now recited, is not shown in Dewey, Jr. This requires additional modification of Dewey, Jr. The Examiner has not suggested such a modification, and it is believed that such further modification would only be motivated by the use of Applicants' claim as a template.

Appl. No. 09/832,631
Amdt. dated July 18, 2005
Reply to Final Office Action of January 18, 2005

Claims 29 and 53 have been amended in like fashion to the amendments to claim 1. The above remarks therefore apply similarly to these claims to establish that the cited combination lacks motivation in light of the now amended claims.

Kumar and Jorgenson are cited to provide specific details for certain of the dependent claims. However, the Examiner has not identified within either Kumar or Jorgenson where or how the above deficiency with the basic combination of Dewey, Jr. and Stafford may be remedied. Additional comment with respect to each of these references may be found in the prior Responses, though it is believed that the above amendments and remarks provide sufficient basis for overcoming the stated rejections.

In light of the above, it is believed that each of claims 1-7, 9, 11, 13-16, 18, 19, 29-35, 37-40, 42, 43 and 53 are patentable over the cited combination.

In light of the above comments and amendments, claims 1 and 29 are believed to be in condition for allowance. Therefore, it is requested that withdrawn claims 8, 10, 12, 17, 20-28, 36, 41 and 44-52 also be considered and allowed in light of their dependence from allowable generic claims.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

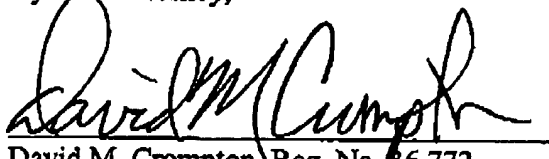
Respectfully submitted,

Robert K. Rowe et al.

By their Attorney,

Date: _____

7/18/05



David M. Crompton, Reg. No. 36,772
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2420
Telephone: (612) 677-9050
Facsimile: (612) 359-9349